

# SPORTS AND AMUSEMENTS

## CHAPTER 448

### HOUSE BILL NO. 1067

(Representative Meier)

(Senator Brown)

(At the request of the Secretary of State)

### EXEMPT BOXING EXHIBITIONS

AN ACT to amend and reenact section 53-01-18 of the North Dakota Century Code, relating to exempt boxing exhibitions.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. AMENDMENT.** Section 53-01-18 of the North Dakota Century Code is amended and reenacted as follows:

**53-01-18. Certain exhibitions exempt.** All boxing or sparring exhibitions conducted ~~or promoted by the high schools or schools of higher learning, or amateur boxing or sparring exhibitions, must be conducted under the rules and supervision of the United States of America amateur boxing federation by bona fide educational institutions or by national amateur boxing associations or its their local affiliates and~~ are exempt from this chapter.

Approved March 26, 2003

Filed March 26, 2003

**CHAPTER 449****SENATE BILL NO. 2148**

(Judiciary Committee)

(At the request of the State Gaming Commission)

**GAMES OF CHANCE REVISIONS**

AN ACT to create and enact a new subsection to section 53-06.1-12.3 of the North Dakota Century Code, relating to installment payments on delinquent taxes or penalties; and to amend and reenact section 53-06.1-01, subsections 2, 3, and 4 of section 53-06.1-01.1, section 53-06.1-03, subsections 1, 4, and 5 of section 53-06.1-06, sections 53-06.1-07.2 and 53-06.1-10, subsections 1 and 2 of section 53-06.1-11.1, subsections 3 and 5 of section 53-06.1-12, subsections 1, 2, 3, 4, and 6 of section 53-06.1-14, subsections 4, 8, 9, 10, and 11 of section 53-06.1-15.1, and subsection 1 of section 53-06.1-16 of the North Dakota Century Code, relating to games of chance.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

<sup>198</sup> **SECTION 1. AMENDMENT.** Section 53-06.1-01 of the North Dakota Century Code is amended and reenacted as follows:

**53-06.1-01. Definitions.** As used in this chapter:

1. "Adjusted gross proceeds" means gross proceeds less cash prizes, cost of merchandise prizes, sales tax on bingo cards, pull tab excise tax, and federal excise tax imposed under section 4401 of the Internal Revenue Code [26 U.S.C. 4401].
2. "Charitable organization" means an organization whose primary purpose is for relief of poor, distressed, underprivileged, diseased, elderly, or abused persons, prevention of cruelty to children or animals, or similar condition of public concern.
3. "Civic and service organization" means an organization whose primary purpose is to promote the common good and social welfare of a community as a sertoma, lion, rotary, jaycee, kiwanis, or similar organization.
4. "Closely related organization" means an organization that controls, is controlled by, or is under common control with another organization. Control exists when an organization has the authority or ability to elect, appoint, or remove a majority of the officers or directors of another organization or, by policy, contract, or otherwise, has the authority or ability to directly or indirectly direct or cause the direction of the management or policies of another organization.

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<sup>198</sup> Section 53-06.1-01 was also amended by section 1 of House Bill No. 1239, chapter 450.

5. "Distributor" means a person that sells, markets, or distributes equipment ~~usable~~ designed for use in the conduct of games.
6. "Educational organization" means a nonprofit public or private elementary or secondary school, two-year or four-year college, or university.
7. "Eligible organization" means a veterans, charitable, educational, religious, fraternal, civic and service, public safety, or public-spirited organization domiciled in North Dakota, incorporated as a nonprofit organization, and which has been regularly and actively fulfilling its primary purpose within this state during the two immediately preceding years. However, an educational organization does not need to be incorporated or be in existence for two years. An organization's primary purpose may not involve the conduct of games. The organization may be issued a license by the attorney general.
8. "Fraternal organization" means an organization, except a school fraternity, which is a branch, lodge, or chapter of a national or state organization and exists for the common business, brotherhood, or other interests of its members. The organization must have qualified for exemption from federal income tax under section 501(c)(8) or 501(c)(10) of the Internal Revenue Code.
9. "Games" means games of chance.
10. "Gross proceeds" means all cash and checks received from conducting games; and sales tax on bingo cards; ~~and admissions~~.
11. "Licensed organization" means an eligible organization licensed by the attorney general.
12. ~~"Local permit" means a permit issued by a governing body of a city or county to a nonprofit organization or group of people domiciled in North Dakota.~~
43. "Manufacturer" means, for a pull tab or bingo card, a person who designs, prints, assembles, or produces the product. For a pull tab or bingo card dispensing device or bingo card marking device, a manufacturer means the person who directly controls and manages development of and owns the rights to the proprietary software encoded on a processing chip that enables the device to operate.
44. 13. "Net proceeds" means adjusted gross proceeds less allowable expenses and gaming tax.
14. "Permit" means a local permit or charity local permit issued by a governing body of a city or county to a nonprofit organization or group of people domiciled in North Dakota.
15. "Person" means any person, partnership, corporation, limited liability company, association, or organization.
16. "Public safety organization" means an organization whose primary purpose is to provide firefighting, ambulance service, crime prevention, or similar emergency assistance.

17. "Public-spirited organization" means an organization whose primary purpose is for scientific research, amateur sports competition, safety, literary, arts, preservation of cultural heritage, educational activities, educational public service, youth, economic development, tourism, community medical care, community recreation, or similar organization, which does not meet the definition of any other type of eligible organization. However, a nonprofit organization or a group of people recognized as a public-spirited organization by a governing body of a city or county for obtaining a ~~local~~ permit does not need to meet this definition.
18. "Religious organization" means a church, body of communicants, or group gathered in common membership whose primary purpose is for advancement of religion, mutual support and edification in piety, worship, and religious observances.
19. "Veterans organization" means any congressionally chartered post organization, or any branch or lodge or chapter of a nonprofit national or state organization whose membership consists of individuals who are or were members of the armed services or forces of the United States. The organization must have qualified for exemption from federal income tax under section 501(c)(19) of the Internal Revenue Code.

**SECTION 2. AMENDMENT.** Subsections 2, 3, and 4 of section 53-06.1-01.1 of the North Dakota Century Code are amended and reenacted as follows:

2. A person is ineligible for appointment to the commission if that person has not been a resident of this state for at least two years before the date of appointment. A person is also ineligible if that person is not of such character and reputation as to promote public confidence in the administration of gaming in this state. A person is also ineligible if that person has been convicted of a felony criminal offense or has pled guilty or been found guilty of any violation of chapter 12.1-06, 12.1-08, 12.1-09, 12.1-10, 12.1-11, 12.1-12, 12.1-22, 12.1-23, 12.1-24, 12.1-28, 53-06.1, or 53-06.2, or has pled guilty or been found guilty of any violation of section 6-08-16 or 6-08-16.2, or has pled guilty or been found guilty of any offense or violation that has a direct bearing on the person's fitness to be involved in gaming, or who has committed an equivalent offense or violation of the laws of another state or of the United States. A person who has a financial interest in gaming or is an employee or a member of the gaming committee of a licensed organization or distributor cannot be a member ~~or employee~~ of the commission. For the purpose of this subsection, a financial interest includes the receiving of any direct payment from an eligible organization for property, services, or facilities provided to that organization.
3. Commission members are entitled to ~~sixty-two~~ seventy-five dollars ~~and fifty cents~~ per day for compensation for each day spent on commission duties and mileage and expense reimbursement as allowed to other state employees.
4. The commission shall adopt rules in accordance with chapter 28-32, to administer and regulate the gaming industry, including methods of conduct, play, and promotion of games; minimum procedures and standards for recordkeeping and internal control; requiring tax returns

and reports from organizations or distributors; methods of competition and doing business by distributors and manufacturers; acquisition and use of gaming equipment; quality standards or specifications for the manufacture of pull tabs, paper bingo cards, ~~and pull tab and bingo card dispensing devices, and bingo card marking devices~~; to ensure that net proceeds are used for educational, charitable, patriotic, fraternal, religious, or public-spirited uses; to protect and promote the public interest; to ensure fair and honest games; to ensure that fees and taxes are paid; and to prevent and detect unlawful gambling activity.

**SECTION 3. AMENDMENT.** Section 53-06.1-03 of the North Dakota Century Code is amended and reenacted as follows:

**53-06.1-03. ~~Local permits~~ Permits, site authorization, and licenses.**

1. Except as authorized by the attorney general, an organization that has its license suspended or revoked, or has relinquished or not renewed its license and not disbursed its net proceeds, is ineligible for a license or ~~local~~ permit. Only one of two or more closely related organizations may have a license or ~~local~~ permit at one time. A college or university fraternity, sorority, or club is not closely related to an educational organization. An organization shall apply for a ~~local~~ permit as follows:

a. An organization recognized as a public-spirited organization by the governing body of a city or county may apply for a local permit to conduct only raffles, bingo, or sports pools, or a charity local permit to conduct only raffles, bingo, sports pools, paddlewheels, twenty-one, and poker. The organization or closely related organizations as a whole may only award a primary prize that does not exceed ~~one~~ two thousand five hundred dollars and total prizes of all games that do not exceed ~~six~~ twelve thousand dollars per year. The determination of what is a "public-spirited organization" is within the sole discretion of the governing body. An organization shall disclose on the application its intended use of the net income from the gaming activity. A governing body may issue a ~~local~~ permit for games to be held at designated times and places. ~~An organization that is issued a charity local permit is restricted to one event per year and:~~

(1) ~~May not pay remuneration to employees for personal services;~~

(2) ~~Shall use chips as wagers;~~

(3) ~~Shall redeem a player's chips for merchandise prizes or cash;~~

(4) ~~Shall disburse gaming proceeds to eligible uses referenced by subsection 2 of section 53-06.1-11.1; and~~

(5) ~~Shall file a report as prescribed by the attorney general with the governing body and attorney general.~~

b. An organization shall apply to the governing body of the city or county in which the proposed site is located. Application must be made on a form prescribed by the attorney general. Approval may

be granted at the discretion of the governing body. A governing body may establish a fee not to exceed twenty-five dollars for each local permit. A local permit must be on a fiscal year basis from July first to June thirtieth or on a calendar-year basis.

- c. Except for the restriction of subsection 1 of section 53-06.1-11.1, an organization that has a local permit may use the net income from the gaming proceeds activity for any purpose that does not violate this chapter or gaming rules.
  - d. An organization that has a charity local permit is restricted to one event per year and:
    - (1) May not pay remuneration to employees for personal services;
    - (2) Shall use chips as wagers;
    - (3) Shall redeem a player's chips for merchandise prizes for cash;
    - (4) Shall disburse net income to eligible uses referenced by subsection 2 of section 53-06.1-11.1; and
    - (5) Shall file a report prescribed by the attorney general with the governing body and attorney general.
2. An eligible organization shall apply for a license to conduct only bingo, raffles, calcuttas, pull tabs, punchboards, twenty-one, paddlewheels, poker, or sports pools by:
- a. First securing approval for a site authorization from the governing body of the city or county in which the proposed site is located. Approval, which may be granted at the discretion of the governing body, must be recorded on a site authorization form that is to accompany the license application to the attorney general for final approval. A governing body may not require an eligible organization to donate net proceeds to the city, county, or related political subdivision or for community programs or services within the city or county as a condition for receiving a site authorization from the city or county. A governing body may limit the number of tables for the game of twenty-one per site and the number of sites upon which a licensed organization may conduct games within the city or county. A governing body may charge a one hundred dollar fee for a site authorization; and
  - b. Annually applying for a license from the attorney general before July first on a form prescribed by the attorney general and remitting a one hundred fifty dollar license fee for each city or county that approves a site authorization. However, the attorney general may allow an organization that only conducts a raffle or calcutta in two or more cities or counties to annually apply for a consolidated license and remit a one hundred fifty dollar license fee for each city or county in which a site is located. An organization shall document that it qualifies as an eligible organization. If an organization amends its primary purpose as stated in its articles of

incorporation or materially changes its basic character, the organization shall reapply for licensure.

3. A licensed organization or organization that has a ~~local~~ permit shall conduct games as follows:
  - a. Only one licensed organization or organization that has a ~~local~~ permit may conduct games at an authorized site on a day, except that a raffle may be conducted for a special occasion by another licensed organization or organization that has a ~~local~~ permit when one of these conditions is met:
    - (1) When the area for the raffle is physically separated from the area where games are conducted by the regular organization.
    - (2) Upon request of the regular organization and with the approval of the alcoholic beverage establishment, the regular organization's license or ~~local~~ permit is suspended for that specific time of day by the attorney general.
  - b. Except for a temporary site authorized for fourteen or fewer consecutive days for not more than two events per quarter, a licensed organization may not have more than twenty-five sites unless granted a waiver by the attorney general. If the attorney general finds that there is no other licensed organization interested in conducting gaming at a site for which a waiver is being sought, the attorney general may approve the waiver for no more than five sites.
  - c. Games of pull tabs, punchboards, twenty-one, paddlewheels, poker, and sports pools may be conducted only during the hours when alcoholic beverages may be dispensed according to applicable regulations of the state, county, or city.
  - d. An organization may not permit a person under twenty-one years of age to directly or indirectly play pull tabs, punchboards, twenty-one, calcuttas, sports pools, paddlewheels, or poker. An organization may not permit a person under eighteen years of age to directly or indirectly play bingo unless the person is accompanied by an adult, bingo is conducted by an organization that has a ~~local~~ permit, or the game's prize structure does not exceed that allowed for a ~~local~~ permit.
4. A ~~local~~ permit<sub>1</sub> or site authorization and license<sub>1</sub> must be displayed at a site.
5. The attorney general may issue a conditional license to an eligible organization whose regularly issued license has expired or been suspended, revoked, or relinquished. The attorney general shall designate the time period for which the conditional license is valid and may impose any conditions.
6. A governing body or local law enforcement official may inspect a site's gaming equipment and examine or cause to be examined ~~the~~ any gaming-related books and records of a licensed organization or

organization that has a ~~local~~ permit ~~to the extent that the books and records relate to any transaction involving the direct or indirect conduct of games.~~

<sup>199</sup> **SECTION 4. AMENDMENT.** Subsections 1, 4, and 5 of section 53-06.1-06 of the North Dakota Century Code are amended and reenacted as follows:

1. No person, except a member, volunteer, an employee of a licensed organization or an organization that has a ~~local~~ permit, or an employee of a temporary employment agency who provides services to a licensed organization, may manage, control, or conduct any game. "Member" includes a member of an auxiliary organization. In conducting pull tabs or bingo through a dispensing device or selling raffle tickets, the attorney general may allow an employee of an alcoholic beverage establishment to provide limited assistance to an organization.
4. The value of a merchandise prize awarded in a game is its retail price, excluding sales tax.
5. A person is restricted from being involved in gaming and the attorney general shall conduct a criminal history record check as follows:
  - a. (1) A person who has pled guilty to or been found guilty of a felony offense as defined by the laws of this state, other states, or the federal government, or has pled guilty to or been found guilty of a violation of this chapter, a gaming rule, chapter 12.1-28 or 53-06.2, or offenses of other states or the federal government equivalent to offenses defined in these chapters, regardless of whether the person has completed or received a deferred imposition of sentence, deferred prosecution, or suspended sentence, may not be a licensed distributor, be an investor in or board member or consultant to a licensed distributor, or be employed by a licensed distributor, and may not be employed by a licensed organization to conduct games, for five years from the date of conviction, release from incarceration, or expiration of parole or probation, whichever is the latest.
  - (2) Paragraph 1 does not apply if the offense to which the person pled guilty or has been found guilty is a misdemeanor and the person has received a deferred imposition of sentence or deferred prosecution and has fully complied with the terms of the deferral.
- b. A person who has pled guilty to or been found guilty of a misdemeanor offense in violation of section 6-08-16.1 or chapter 12.1-06, 12.1-23, or 12.1-24 or offenses of other states, the federal government, or a municipality equivalent to these offenses, regardless if the person has completed or received a suspended sentence, may not be a licensed distributor or be employed by a

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<sup>199</sup> Section 53-06.1-06 was also amended by section 2 of House Bill No. 1239, chapter 450.



licensed distributor, and may not be employed by a licensed organization to conduct games, for two years from the date of conviction, release from incarceration, or expiration of parole or probation, whichever is the latest, unless the person has received a deferred imposition of sentence or deferred prosecution and has fully complied with the terms of the deferral.

- c. Unless an employee is exempt by the gaming rules or attorney general, the attorney general shall conduct a criminal history record check of each employee of a licensed organization or distributor and charge a fee of ~~twenty dollars~~ prescribed by section 12-60-16.9. The fee may be waived by the attorney general if a federal agency or local law enforcement agency has done a record check. The attorney general may require advance payment of any additional fee necessary to pay the cost of a record check of a person for whom adequate background information sources are not readily available. ~~Instead of paying the additional fee, a person may cancel the record check.~~ The advance payment must be placed in the attorney general's refund fund. The unused funds must be returned to the person within thirty days of the conclusion of the record check. Unless a federal or local law enforcement agency conducts the record check, the attorney general shall notify the organization or distributor and person of the result. The attorney general shall keep the information confidential except in the proper administration of this chapter or any gaming rule or to provide to an authorized law enforcement agency.

**SECTION 5. AMENDMENT.** Section 53-06.1-07.2 of the North Dakota Century Code is amended and reenacted as follows:

**53-06.1-07.2. Poker.** Poker may be conducted on not more than two occasions per year. An organization may supply the dealer. The maximum single bet is one dollar. Not more than three raises, of not more than one dollar each, may be made among all the players in each round of bets. For nontournament activity, an organization shall charge each player a fee not to exceed two dollars per one-half hour of playing time, collected in advance. For a tournament, an organization shall charge each player an entry fee and the amount of prizes may not exceed ninety percent of the gross proceeds.

**SECTION 6. AMENDMENT.** Section 53-06.1-10 of the North Dakota Century Code is amended and reenacted as follows:

**53-06.1-10. Twenty-one.** The organization shall provide playing chips of various denominations to players although the organization may use a metal coin rather than a fifty-cent chip. The maximum limit per wager may be set by the organization at not more than twenty-five dollars and original wagers in increments of one dollar must be accepted up to the maximum limit. However, if there is more than one table that is active at a site, the organization may set a minimum wager on no more than one-half of the active tables. A player may not play more than two hands at the same time. Only the player actually playing a hand may place a wager on ~~any~~ that hand. Each player plays the player's hand against the dealer's hand. Any requirement to pool tips is within the sole discretion of each organization. Except for a site that has twenty-one gross proceeds averaging less than ten thousand dollars per quarter, an organization may not conduct twenty-one at the site with wagers exceeding two dollars unless the organization has first installed video surveillance

equipment as required by rules and the equipment is approved by the attorney general.

**SECTION 7. AMENDMENT.** Subsections 1 and 2 of section 53-06.1-11.1 of the North Dakota Century Code are amended and reenacted as follows:

1. A licensed organization or an organization that has a ~~local~~ permit may not use money from any source for placing an initiated or referred measure on a ballot or for a political campaign to promote or oppose a person for public office. Except for a use related to an organization's primary purpose, a licensed organization or organization that has a ~~local~~ permit may not use net proceeds to influence legislation or promote or oppose referendums or initiatives. Any funds expended by a licensed organization or an organization that has a ~~local~~ permit to promote or oppose an initiated or referred measure that is on the ballot or for any activities of a lobbyist under section 54-05.1-02, that are not compensation or expenses paid to a lobbyist, and that are not required to be reported under section 54-05.1-03 must be reported to the attorney general as prescribed by the attorney general. A violation of this subsection subjects an organization to a suspension of its license or ~~local~~ permit for up to one year.
2. A licensed organization or an organization that has a charity local permit shall disburse net proceeds within the period prescribed by rule and for only these educational, charitable, patriotic, fraternal, religious, or public-spirited uses:
  - a. Uses for stimulating and promoting state and community-based economic development programs within the state which improve the quality of life of community residents.
  - b. Uses for developing, promoting, and supporting tourism within a city, county, or the state.
  - c. Uses benefiting an indefinite number of persons by bringing them under the influence of education, cultural programs, or religion which include disbursements to provide:
    - (1) Scholarships for students, if the disbursement is deposited in a scholarship fund for defraying the cost of education to students and the scholarships are awarded through an open and fair selection process.
    - (2) Supplementary assistance to a public or private nonprofit educational institution registered with or accredited by any state.
    - (3) Assistance to libraries and museums.
    - (4) Assistance for the performing arts and humanities.
    - (5) Preservation of cultural heritage.
    - (6) Youth community, social welfare, and athletic activities.

- (7) Adult amateur athletic activities within the state, including team uniforms and equipment.
  - (8) Maintenance of places of public worship or support of a body of communicants, gathered in common membership for mutual support and edification in piety, worship, or religious observances.
  - (9) Scientific research.
- d. Uses benefiting an indefinite number of persons by relieving them of disease, suffering, or constraint which include disbursements to provide:
- (1) Assistance to an individual or family suffering from poverty or homelessness.
  - (2) Encouragement and enhancement of the active participation of the elderly in our society.
  - (3) Services to the abused.
  - (4) Services to persons with an addicted behavior toward alcohol, gambling, or drugs.
  - (5) Funds to combat juvenile delinquency and rehabilitate ex-offenders.
  - (6) Relief for the sick, diseased, and terminally ill and their physical well-being.
  - (7) Funds for emergency relief and volunteer services.
  - (8) Funds to nonprofit nursing homes, nonprofit day care centers, and nonprofit medical facilities.
  - (9) Social services and education programs aimed at aiding emotionally and physically distressed, handicapped, elderly, and underprivileged persons.
  - (10) Funds for crime prevention, fire protection and prevention, and public safety.
  - (11) Funds to relieve, improve, and advance the physical and mental conditions, care and medical treatment, and health and welfare of injured or disabled veterans.
- e. Uses that perpetuate the memory and history of the dead.
- f. Uses increasing comprehension of and devotion to the principles upon which the nation was founded, not of direct benefit to the eligible organization or any member thereof which include disbursements to aid in teaching the principles of liberty, truth, justice, and equality. However, beauty pageants do not qualify.

- g. The erection or maintenance of public buildings, facilities, utilities, or waterworks.
- h. Uses lessening the burden of government which include disbursements to an entity that is normally funded by a city, county, state, or United States government and disbursements directly to a government entity or its agency.
- i. Uses benefiting a definite number of persons who are the victims of loss of home or household possessions through explosion, fire, flood, or storm and the loss is not covered by insurance.
- j. Uses benefiting a definite number of persons suffering from a seriously disabling disease or injury causing severe loss of income or incurring extraordinary medical expense which is not covered by insurance.
- k. Uses, for community service projects, by chambers of commerce exempt from federal income tax under section 501(c)(6) of the Internal Revenue Code. A project qualifies if it develops or promotes public services, including education, housing, transportation, recreation, crime prevention, fire protection and prevention, safety, tourism, and health. Uses that directly benefit a chamber of commerce do not qualify.
- l. Uses for or of benefit to efforts in support of the health, comfort, or well-being of the community which include disbursements to provide:
  - (1) Funds for adult bands, including drum and bugle corps.
  - (2) Funds for trade shows and conventions conducted in this state.
  - (3) Funds for nonprofit organizations that operate a humane society, zoo, or fish or wildlife reproduction and habitat enhancement program.
  - (4) Funds for public transportation, community celebration, and recreation.
  - (5) Funds for preservation and cleanup of the environment.
- m. To the extent net proceeds are used toward the primary purpose of a charitable, educational, religious, public safety, or public-spirited organization, or are used for a veterans or public cemetery by a veterans organization, that has obtained a final determination from the internal revenue service as qualifying for exemption from federal income tax under section 501(c)(3) or 501(c)(19) of the Internal Revenue Code, the organization may establish a special trust fund or foundation as a contingency for funding or maintaining the organization's future program services should the organization discontinue conducting games or dissolve.

- n. Uses for a fundraising activity unrelated to an organization's ~~program services~~ primary purpose provided that the gross revenue from the activity is disbursed to uses prescribed by this subsection.

**SECTION 8. AMENDMENT.** Subsections 3 and 5 of section 53-06.1-12 of the North Dakota Century Code are amended and reenacted as follows:

3. For organizations whose gross proceeds of pull tabs do not exceed four thousand dollars per calendar quarter, no excise tax may be imposed on the gross proceeds from the sale at retail of pull tabs to final users.
5. The state treasurer shall deposit three percent of the total taxes, less refunds, collected under this section into a gaming and excise tax allocation fund. Pursuant to legislative appropriation, moneys in the fund must be distributed quarterly to cities and counties in proportion to the taxes collected under this section from licensed organizations conducting games of chance within each city, for sites within city limits, or within each county, for sites outside city limits. If a city or county allocation under this subsection is less than two hundred dollars, that city or county is not entitled to receive a payment for the quarter and the undistributed amount must be included in the total amount to be distributed to other cities and counties for the quarter.

**SECTION 9.** A new subsection to section 53-06.1-12.3 of the North Dakota Century Code is created and enacted as follows:

The attorney general may authorize an organization to pay any delinquent tax, interest, or penalty on an installment plan and may set any qualifying conditions.

<sup>200</sup> **SECTION 10. AMENDMENT.** Subsections 1, 2, 3, 4, and 6 of section 53-06.1-14 of the North Dakota Century Code are amended and reenacted as follows:

1. A manufacturer of pull tabs, bingo cards, bingo card marking devices, or pull tab dispensing devices shall apply annually for a license and pay a license fee of four thousand dollars. A distributor shall apply annually for a license and pay a license fee of one thousand five hundred dollars. Application must be made before the first day of April in each year on a form prescribed by the attorney general ~~before the first day of April in each year.~~
2. A licensed distributor may not sell, market, or distribute gaming equipment except to a licensed distributor, licensed organization, organization that has a ~~local~~ permit, or other person authorized by gaming rule or the attorney general. A manufacturer of a pull tab dispensing device, pull tab, bingo card marking device, or bingo card may only sell, market, or distribute the manufacturer's pull tab dispensing device and processing chip encoded with proprietary software, pull tab, bingo card marking device, or bingo card to a

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<sup>200</sup> Section 53-06.1-14 was also amended by section 1 of House Bill No. 1404, chapter 451, and section 9 of Senate Bill No. 2003, chapter 24.

licensed distributor. A licensed distributor may purchase or acquire a pull tab dispensing device and processing chip encoded with proprietary software, pull tab, bingo card marking device, or bingo card only from a licensed manufacturer or licensed distributor. However, a distributor may purchase or acquire a used pull tab dispensing device from a licensed organization. A distributor may not duplicate a manufacturer's processing chip encoded with proprietary software. No gaming equipment or ~~prizes~~ prize may be sold or leased at an excessive price.

3. A licensed distributor shall affix a North Dakota gaming stamp to each deal of pull tabs and bingo cards, punchboard, sports pool board, calcutta board, and series of paddlewheel ticket cards sold or otherwise provided to a licensed organization and shall purchase the stamps from the attorney general for thirty-five cents each. Ten cents of each stamp sold by the attorney general, up to thirty-six thousand dollars per biennium, must be credited to the attorney general's operating fund to defray the costs of issuing the gaming stamps.
4. A licensed organization, organization that has a ~~local~~ permit, licensed manufacturer, or North Dakota wholesaler of liquor or alcoholic beverages may not be a distributor or stockholder of a distributor. A distributor may not be a stockholder of a manufacturer.
6. A licensed manufacturer may not refuse to sell deals of pull tabs or paper bingo cards to a licensed distributor unless:
  - a. A specific deal of pull tabs is sold on an exclusive basis;
  - b. The manufacturer does not sell deals of pull tabs or paper bingo cards to any distributor in the state;
  - c. A gaming law or rule prohibits the sale;
  - d. The distributor has not provided the manufacturer with proof of satisfactory credit or is delinquent on any payment owed to the manufacturer; or
  - e. The distributor has not met the manufacturer's standard minimum order quantity and freight terms.

**SECTION 11. AMENDMENT.** Subsections 4, 8, 9, 10, and 11 of section 53-06.1-15.1 of the North Dakota Century Code are amended and reenacted as follows:

4. Demand access to and inspect, examine, photocopy, and audit all books and records of applicants, organizations, lessors, manufacturers, distributors, and affiliated companies on their premises concerning any income, ~~or expense resulting from any gaming activity,~~ or use of net proceeds, and determine compliance with this chapter or gaming rules; ~~and require verification of income, expense, or use of net proceeds, and all other matters affecting this chapter.~~
8. Require or authorize an organization to pay or prohibit an organization from paying a bingo or raffle prize to a player on a dispute or based on a factual determination or a hearing by the attorney general.

9. Based on reasonable ground or written complaint, suspend, deny, or revoke an organization's ~~local~~ permit or an organization's, distributor's, or manufacturer's application or license for violation, by the organization, distributor, or manufacturer or any officer, director, agent, member, or employee of the organization, distributor, or manufacturer, of this chapter or any gaming rule.
10. Impose a monetary fine on a licensed organization, organization that has a ~~local~~ permit, distributor, or manufacturer for failure to comply with this chapter or any gaming rule. The monetary fine for each violation by an organization is a minimum of twenty-five dollars and may not exceed two percent of the organization's average quarterly gross proceeds, or five thousand dollars, whichever is greater. The monetary fine for each violation by a distributor is a minimum of one hundred dollars and may not exceed five thousand dollars. The monetary fine for each violation by a manufacturer is a minimum of five hundred dollars and may not exceed two hundred fifty thousand dollars. This fine may be in addition to or in place of a license suspension or revocation.
11. At any time within three years after any amount of fees, monetary fine, interest, penalty, or tax required to be paid pursuant to this chapter becomes due, bring a civil action to collect the amount due. However, if for any reason there is a change in adjusted gross ~~income~~ proceeds or tax liability by an amount which is in excess of twenty-five percent of the amount of adjusted gross ~~income~~ proceeds or tax liability originally reported on the tax return, any additional tax determined to be due may be assessed within six years after the due date of the tax return, or six years after the tax return was filed, whichever period expires later. An action may be brought although the person owing the fees or tax is not presently licensed.

**SECTION 12. AMENDMENT.** Subsection 1 of section 53-06.1-16 of the North Dakota Century Code is amended and reenacted as follows:

1. Except as otherwise provided by this chapter, a person who knowingly makes a false statement on a request for record check form or in any application for a ~~local~~ permit, or license, or in any accompanying statement, knowingly signs a false record or report, or who fails to maintain sufficient books and records or adequate internal control to substantiate gross proceeds, prizes, cash profits, expenses, or disbursement of net proceeds, or who falsifies any books or records ~~relating to,~~ including any transaction involving the direct or indirect conduct of games, or who violates this chapter, any gaming rule, or of any term of a ~~local~~ permit or license is guilty of a class A misdemeanor. If convicted, the person forfeits any gaming license or ~~local~~ permit issued to it and is ineligible to reapply for a gaming license or ~~local~~ permit for a period of time determined by the attorney general.

Approved April 23, 2003  
Filed April 23, 2003

## CHAPTER 450

### HOUSE BILL NO. 1239

(Representatives Porter, Delmore, Wrangham)  
(Senators Krebsbach, Trenbeath)

## PRIZE BOARDS

AN ACT to amend and reenact section 53-06.1-01 and subsection 1 of section 53-06.1-06 of the North Dakota Century Code, relating to the selling of prize boards.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>201</sup> **SECTION 1. AMENDMENT.** Section 53-06.1-01 of the North Dakota Century Code is amended and reenacted as follows:

**53-06.1-01. Definitions.** As used in this chapter:

1. "Adjusted gross proceeds" means gross proceeds less cash prizes, cost of merchandise prizes, sales tax on bingo cards, pull tab excise tax, and federal excise tax imposed under section 4401 of the Internal Revenue Code [26 U.S.C. 4401].
2. "Charitable organization" means an organization whose primary purpose is for relief of poor, distressed, underprivileged, diseased, elderly, or abused persons, prevention of cruelty to children or animals, or similar condition of public concern.
3. "Civic and service organization" means an organization whose primary purpose is to promote the common good and social welfare of a community as a sertoma, lion, rotary, jaycee, kiwanis, or similar organization.
4. "Closely related organization" means an organization that controls, is controlled by, or is under common control with another organization. Control exists when an organization has the authority or ability to elect, appoint, or remove a majority of the officers or directors of another organization or, by policy, contract, or otherwise, has the authority or ability to directly or indirectly direct or cause the direction of the management or policies of another organization.
5. "Distributor" means a person that sells, markets, or distributes equipment usable in the conduct of games.
6. "Educational organization" means a nonprofit public or private elementary or secondary school, two-year or four-year college, or university.

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<sup>201</sup> Section 53-06.1-01 was also amended by section 1 of Senate Bill No. 2148, chapter 449.



7. "Eligible organization" means a veterans, charitable, educational, religious, fraternal, civic and service, public safety, or public-spirited organization domiciled in North Dakota, incorporated as a nonprofit organization, and which has been actively fulfilling its primary purpose within this state during the two immediately preceding years. However, an educational organization does not need to be incorporated. An organization's primary purpose may not involve the conduct of games. The organization may be issued a license by the attorney general.
8. "Fraternal organization" means an organization, except a school fraternity, which is a branch, lodge, or chapter of a national or state organization and exists for the common business, brotherhood, or other interests of its members. The organization must have qualified for exemption from federal income tax under section 501(c)(8) or 501(c)(10) of the Internal Revenue Code.
9. "Games" means games of chance.
10. "Gross proceeds" means all cash and checks received from conducting games, sales tax on bingo cards, and admissions.
11. "Licensed organization" means an eligible organization licensed by the attorney general.
12. "Local permit" means a permit issued by a governing body of a city or county to a nonprofit organization or group of people domiciled in North Dakota.
13. "Manufacturer" means, for a pull tab or bingo card, a person who designs, prints, assembles, or produces the product. For a pull tab or bingo card dispensing device or bingo card marking device, a manufacturer means the person who directly controls and manages development of and owns the rights to the proprietary software encoded on a processing chip that enables the device to operate.
14. "Net proceeds" means adjusted gross proceeds less allowable expenses and gaming tax.
15. "Person" means any person, partnership, corporation, limited liability company, association, or organization.
16. "Prize board" means a board used with pull tabs to award cash or merchandise prizes.
17. "Public safety organization" means an organization whose primary purpose is to provide firefighting, ambulance service, crime prevention, or similar emergency assistance.
- ~~47.~~ 18. "Public-spirited organization" means an organization whose primary purpose is for scientific research, amateur sports competition, safety, literary, arts, preservation of cultural heritage, educational activities, educational public service, youth, economic development, tourism, community medical care, community recreation, or similar organization, which does not meet the definition of any other type of eligible organization. However, a nonprofit organization or a group of people recognized as a public-spirited organization by a governing body of a

city or county for obtaining a local permit does not need to meet this definition.

~~48.~~ 19. "Religious organization" means a church, body of communicants, or group gathered in common membership whose primary purpose is for advancement of religion, mutual support and edification in piety, worship, and religious observances.

~~49.~~ 20. "Veterans organization" means any congressionally chartered post organization, or any branch or lodge or chapter of a nonprofit national or state organization whose membership consists of individuals who are or were members of the armed services or forces of the United States. The organization must have qualified for exemption from federal income tax under section 501(c)(19) of the Internal Revenue Code.

<sup>202</sup> **SECTION 2. AMENDMENT.** Subsection 1 of section 53-06.1-06 of the North Dakota Century Code is amended and reenacted as follows:

1. No person, except a member, volunteer, an employee of a licensed organization or an organization that has a local permit, or an employee of a temporary employment agency who provides services to a licensed organization, may manage, control, or conduct any game. "Member" includes a member of an auxiliary organization. In conducting pull tabs, prize boards, or bingo through a dispensing device ~~or~~, selling raffle tickets, or conducting sports pools, the attorney general may allow an employee of an alcoholic beverage establishment to provide limited assistance to an organization.

Approved March 27, 2003  
Filed March 28, 2003

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<sup>202</sup> Section 53-06.1-06 was also amended by section 4 of Senate Bill No. 2148, chapter 449.

**CHAPTER 451****HOUSE BILL NO. 1404**  
(Representatives Wrangham, Grosz)  
(Senator Dever)**PULL TAB DISPENSING DEVICE MANUFACTURER  
LICENSES**

AN ACT to amend and reenact subsection 1 of section 53-06.1-14 of the North Dakota Century Code, relating to the license fee for pull tab dispensing device manufacturers.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

<sup>203</sup> **SECTION 1. AMENDMENT.** Subsection 1 of section 53-06.1-14 of the North Dakota Century Code is amended and reenacted as follows:

1. A manufacturer of pull tabs, bingo cards, or bingo card marking devices, ~~or pull tab dispensing devices~~ shall apply annually for a license and pay a license fee of four thousand dollars. A manufacturer of pull tab dispensing devices shall apply annually for a license and pay a license fee of one thousand dollars. A distributor shall apply annually for a license and pay a license fee of one thousand five hundred dollars. Application must be made before the first day of April in each year on a form prescribed by the attorney general ~~before the first day of April in each year.~~

Approved April 7, 2003  
Filed April 7, 2003

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<sup>203</sup> Section 53-06.1-14 was also amended by section 9 of Senate Bill No. 2003, chapter 24, and section 10 of Senate Bill No. 2148, chapter 449.

## CHAPTER 452

### SENATE BILL NO. 2285

(Senators Heitkamp, Grindberg)  
(Representatives R. Kelsch, Nelson)

## WAGERS PARIMUTUEL TAX

AN ACT to amend and reenact section 53-06.2-11 of the North Dakota Century Code, relating to the parimutuel tax levied upon wagers.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 53-06.2-11 of the North Dakota Century Code is amended and reenacted as follows:

**53-06.2-11. Bet payoff formulas - Uses by licensee of funds in excess of expenses - Payment to general fund.**

1. For each day of a live race meet or a simulcast day in this state on win, place, and show parimutuel pools, the licensee shall deduct up to twenty percent of the total win, place, and show pool. ~~The licensee may retain seventeen percent for expenses.~~ One-half of one percent must be paid to the North Dakota racing commission to be used for the North Dakota purse fund. One-half of one percent must be paid to the North Dakota racing commission to be used for the North Dakota breeders' fund for the respective breed of horses racing at that meet. ~~The remaining~~ On the first thirty-five million five hundred thousand dollars of total wagering handle in each biennium, two percent must be paid to the state treasurer to be deposited in the general fund. On the total wagering handle in excess of thirty-five million five hundred thousand dollars in each biennium, one-half of one percent must be paid to the state treasurer to be deposited in the general fund.
2. For each day of a live race meet or a simulcast day in this state for each daily double, quinella, exacta, trifecta, or other wager combining two or more horses for winning payoffs, the licensee shall deduct up to twenty-five percent of each wagering pool. ~~Of this amount, the licensee may retain twenty-one percent for expenses. One-half~~ Of each wagering dollar, the amounts to be deposited in the general fund and other funds are as follows:
  - a. On the first one hundred two million four hundred thousand dollars of wagering handle in each biennium, one-half of one percent must be paid to the commission to be deposited in the purse fund. One-half; one-half of one percent must be paid to the commission to be deposited in the promotion fund. One-half; one-half of one percent must be paid to the commission to be deposited in the breeders' fund. The remaining; and two and one-half percent must be paid to the state treasurer to be deposited in the general fund.
  - b. On the wagering handle in excess of one hundred two million four hundred thousand dollars in each biennium, one-half of one

percent must be paid to the commission to be deposited in the purse fund; one-half of one percent must be paid to the commission to be deposited in the promotion fund; one-half of one percent must be paid to the commission to be deposited in the breeders' fund; and one-fourth of one percent must be paid to the state treasurer to be deposited in the general fund.

3. Unclaimed tickets and breakage from each live race meet and simulcast program as defined by the commission and the percentage of the wagering pool to be paid to the racing promotion fund under subsections 1 and 2 must be retained by the commission in a special fund to assist in improving and upgrading racetracks in the state, for the promotion of horse racing within the state, and in developing new racetracks in the state as necessary and approved by the commission. Notwithstanding this section, the commission may, upon approval of the attorney general, receive no more than twenty-five percent of this fund for the purpose of payment of operating expenses of the commission.
4. The licensee conducting a live race meet or simulcast program shall retain all other money in the parimutuel pool and pay it to bettors holding winning tickets as provided by rules adopted by the commission.
5. A licensee may not use any of the portion deducted for expenses under subsections 1 and 2 for expenses not directly incurred by the licensee in conducting parimutuel racing under the certificate system. After paying qualifying expenses, the licensee shall use the remainder of the amount so withheld only for eligible uses allowed to charitable gambling organizations under subsection 2 of section 53-06.1-11.
6. The racing commission shall deposit the moneys received pursuant to subsections 1, 2, and 3 and from the North Dakota horse racing foundation pursuant to subsection 5 of section 53-06.2-05 in three special funds in the state treasury. These funds must be known as the breeders' fund, the purse fund, and the racing promotion fund. Moneys, and any earnings on the moneys, in the breeders' fund, purse fund, and racing promotion fund are appropriated to the commission on a continuing basis to carry out the purposes of those funds under this chapter and must be administered and disbursed in accordance with rules adopted by the commission.

Approved May 2, 2003

Filed May 2, 2003

**CHAPTER 453****SENATE BILL NO. 2321**

(Senators Trenbeath, Bowman, Robinson)  
(Representatives Monson, Tieman)

**RECREATIONAL USE LIMITED LIABILITY**

AN ACT to amend and reenact section 53-08-05 of the North Dakota Century Code, relating to the limited liability of the owner of land used for recreational purposes.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. AMENDMENT.** Section 53-08-05 of the North Dakota Century Code is amended and reenacted as follows:

**53-08-05. Failure to warn against dangerous conditions - Charge to enter.** ~~Nothing in this~~ This chapter limits ~~does not limit~~ in any way any liability ~~which~~ that otherwise exists for:

1. Willful and malicious failure to guard or warn against a dangerous condition, use, structure, or activity; or
2. Injury suffered in any case ~~when~~ in which the owner of land ~~charges:~~
  - a. Charges the person or persons who enter or go on for entry onto the land other than the amount, if any, paid to the owner of the land by the state; and
  - b. The total charges collected by the owner in the previous calendar year for all recreational use of land under the control of the owner are more than:
    - (1) Twice the total amount of property taxes imposed on the land for the previous calendar year; or
    - (2) In the case of agricultural land, four times the total amount of property taxes imposed on the land for the previous calendar year.

Approved March 27, 2003  
Filed March 28, 2003

## CHAPTER 454

### HOUSE BILL NO. 1243

(Representatives Maragos, Berg, Boucher)  
(Senators O'Connell, Stenehjem)

## LOTTERY ESTABLISHMENT AND OPERATION

AN ACT to create and enact a new section to chapter 50-06, chapter 53-12, a new subsection to section 57-38-57, a new subsection to section 57-39.2-04, and a new subsection to section 57-39.2-23 of the North Dakota Century Code, relating to compulsive gambling prevention and treatment, the establishment of the North Dakota lottery, disclosure of confidential income and sales and use tax information, and to an exemption from sales tax; to amend and reenact subsection 2 of section 50-09-14 and subsection 2 of section 54-10-01 of the North Dakota Century Code, relating to setoffs of lottery prize payments for payment of child support and to the powers and duties of the state auditor; to provide a penalty; to provide a continuing appropriation; to provide for reimbursement of lottery expenses; and to declare an emergency.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1.** A new section to chapter 50-06 of the North Dakota Century Code is created and enacted as follows:

**Compulsive gambling prevention and treatment fund - Continuing appropriation.** Funds deposited in the compulsive gambling prevention and treatment fund under section 53-12-21 are appropriated to the department on a continuing basis for the purpose of providing the services under section 50-06-21.

**SECTION 2. AMENDMENT.** Subsection 2 of section 50-09-14 of the North Dakota Century Code is amended and reenacted as follows:

2. Any person aggrieved by an action taken by the state agency or a child support agency under section 14-09-25, chapter 35-34, this chapter, ~~or chapter 35-34~~ or by the North Dakota lottery director under chapter 53-12 to establish or enforce a child support order may seek review of the action of ~~the state agency or child support agency~~ in the court of this state ~~that~~ which issued or considered the child support order. If an order for child support was issued by a court or administrative tribunal in another state, any person aggrieved by an action taken by the state agency or a child support agency under section 14-09-25, chapter 35-34, this chapter, ~~or chapter 35-34~~ or by the North Dakota lottery director under chapter 53-12 to enforce that order may seek review of the action of ~~the state agency or child support agency~~ in any court of this state which has jurisdiction to enforce that order, or if no court of this state has jurisdiction to enforce that order, in any court of this state with jurisdiction over the necessary parties. Any review sought under this subsection must be commenced within thirty days after the date of action for which review is sought. A person who has a right of review under this subsection may not seek review of the actions of ~~the state agency or child support agency~~ in a proceeding under chapter 28-32.

**SECTION 3.** Chapter 53-12 of the North Dakota Century Code is created and enacted as follows:

**53-12-01. Definitions.** As used in this chapter:

1. "Advisory commission" means the North Dakota lottery advisory commission.
2. "Director" means the director of the North Dakota lottery.
3. "Gross profits" means on-line sales of lottery tickets less prize share payments, prizes claimed on redeemed winning tickets, and lottery retailer commissions.
4. "Immediate family member" means a parent, stepparent, child, stepchild, spouse, or sibling who is a member of the same household in the principal place of abode.
5. "Major procurement" means any contract with any vendor directly involved in providing facilities, equipment, tickets, and services unique to the lottery, but not including materials, supplies, equipment, and services common to the ordinary operations of state agencies.
6. "North Dakota lottery" means the division of the attorney general's office created to operate a lottery pursuant to this chapter.
7. "On-line lottery" means a game linked to a central computer via a telecommunications network in which the player selects a specified group of numbers or symbols out of a predetermined range of numbers or symbols.
8. "Retailer" means any person the North Dakota lottery has licensed to sell lottery tickets to the public.
9. "Ticket" means any tangible evidence issued or authorized by the North Dakota lottery to prove participation in an on-line lottery game.
10. "Vendor" means any person who has entered a major procurement contract with the North Dakota lottery.

**53-12-02. North Dakota lottery - Administration - Overall control and operation of games.** There is established a division of the attorney general's office to be called the North Dakota lottery. Under the supervision of the attorney general, a director shall administer the lottery as provided in this chapter. In all decisions, the director shall take into account the particularly sensitive nature of the lottery and shall act to promote and ensure the integrity, security, honesty, and fairness of its operation and administration. The overall management of the lottery and control over the operation of its games rest solely with the North Dakota lottery.

**53-12-03. Director - Appointment - Employment of personnel.** The attorney general shall appoint a director who shall serve at the pleasure of the attorney general. The director may employ those persons as may be necessary to operate the lottery.

**53-12-04. Functions of director.** Subject to the rules and policies established by the attorney general, the director may:



1. Supervise and administer the operation of the lottery in accordance with this chapter and in accordance with the written agreement with a government-authorized lottery;
2. Employ other employees of the North Dakota lottery;
3. Enter contracts for promotional services; annuities or other methods deemed appropriate for the payment of prizes; data processing and other technical products, equipment, and services, including services from financial institutions and other state agencies; and facilities as needed to operate the lottery, including tickets and other services involved in major procurements;
4. License persons for the sale of lottery tickets as provided by this chapter and rules adopted to implement this chapter;
5. Make demographic studies of lottery players and studies of reactions of citizens to existing and potential features of the lottery;
6. Require lottery retailers and persons licensed under this chapter to furnish proof of financial stability or to post a bond in an amount the director deems necessary to protect the financial interests of the state;
7. Provide for secure facilities to house the North Dakota lottery;
8. Provide for secure data processing facilities to be used for the reliable operation of the lottery;
9. Examine, or cause to be examined by any agent or representative designated by the director, any books, papers, records, or memoranda of any retailer or person licensed under this chapter for the purpose of ascertaining compliance with this chapter or any rule adopted under this chapter;
10. Based on reasonable ground or written complaint, suspended, deny, or revoke a lottery retailer's license or impose a monetary fine, or both, for a violation, by the retailer or any agent, member, or employee of the retailer, of this chapter or any rule adopted under this chapter; and
11. Share human and financial resources of other divisions within the office of attorney general.

**53-12-05. Competitive bidding required before entering into contracts.**

When entering contracts, the director shall utilize an open and competitive bid process which reflects the best interest of the state. The director shall consider all relevant factors, including security, competence, experience, timely performance, and maximization of net revenues to the state.

**53-12-06. Investigation of vendors.** Before a contract for a major procurement is awarded, the director shall conduct a thorough background investigation of the vendor, any parent or subsidiary corporation of the vendor, all shareholders of five percent or more interest in the vendor or parent or subsidiary corporation of the vendor, and all officers and directors of the vendor or parent or subsidiary corporation of the vendor to whom the contract is to be awarded. In conducting the investigations, the director may use the information of other states to determine the qualifications of the vendor. The vendor shall submit appropriate

investigation authorizations to facilitate this investigation. The director may require any additional information from the vendor that is considered appropriate to preserve the integrity and security of the lottery.

**53-12-07. Additional functions of director.** The director shall:

1. Enter a written agreement with a government-authorized lottery, or with an organization created and controlled by those lotteries, for the operation, marketing, and promotion of a joint lottery game;
2. Make and keep books and records which accurately and fairly reflect each day's transactions, including the distribution and sale of tickets, receipt of funds, prize claims, prize disbursements, or prizes liable to be paid, expenses and other financial transactions of the lottery necessary so as to ensure accountability;
3. Make quarterly and annual financial reports to the governor and the attorney general and biennial reports to the legislative assembly. The reports must be based upon generally accepted accounting principles and include a full and complete statement of the lottery's financial position and operations;
4. Upon request, report to the legislative council regarding the implementation and operation of the lottery;
5. Have an annual audit, conducted by the state auditor, of all accounts and transactions of the North Dakota lottery. The audit report must be presented to the governor, the state treasurer, and the legislative assembly;
6. Contract with an agency of state government or an independent firm experienced in security procedures to periodically conduct a comprehensive study and evaluation of all aspects of security in the operation of the lottery;
7. Prepare and submit budgets and proposals for the operation of the lottery;
8. Operate the lottery so that after the initial funding, it is self-sustaining and self-funded; and
9. Make provision for the timely and efficient transfer of funds due from lottery retailers.

**53-12-08. Lottery expenses and prizes to be paid from lottery funds - General funds not to be used or obligated - Exception.** No claim for the payment of an expense of the lottery or the payment of a lottery prize may be made unless it is against the lottery operating fund or money collected from the sale of lottery tickets. Except for the initial startup funding to the lottery, the general funds of the state may not be used or obligated to pay the expenses of the lottery or prizes of the lottery.

**53-12-09. Selection of lottery retailers.**

1. The director shall select as retailers those persons the director deems best able to serve the public convenience and promote the sale of tickets. In the selection of retailers, the director shall consider factors,

including financial responsibility, security of the applicant's place of business or activity, accessibility of the applicant's place of business or activity, integrity, reputation, sufficiency of existing lottery retailers to serve the public convenience, especially in geographically remote areas of the state, volume of expected sales, and any other factors as the director may deem appropriate. Any person lawfully engaged in nongovernmental business on state property may be selected as retailers.

2. No applicant for a license or other affirmative action has any right to a license or to the granting of the approval sought. Any license issued or other approval granted under this chapter is a revocable privilege, and the holder does not acquire any vested interest or property right in the license or other approval granted under this chapter.

**53-12-10. Reapplication for license after denial or revocation - Denial or revocation decisions final.** Any applicant for a license who has had an application denied or a license revoked by the director may not reapply until at least one year has elapsed from the date of the denial or revocation. Any person who has been denied a license or had a license revoked for a second time may not reapply until at least three years have passed since the date of the second denial or revocation. The decision of the director to deny an application or to revoke a license is final and is not reviewable.

**53-12-11. Retailer's application fee - Annual renewal of license - License not transferable or assignable.** The director may charge an application fee to a person applying to become a retailer. A retailer license awarded by the lottery under this chapter is renewable annually after issuance unless sooner canceled, revoked, or terminated. A retailer license awarded under this chapter is not transferable or assignable.

**53-12-12. Issuance of retailer license - Display - Sales only at location on license.** Each retailer must be issued a retailer license that must be conspicuously displayed at the place where the retailer is authorized to sell tickets. Tickets may only be sold by the retailer at the location stated on the retailer license.

**53-12-13. Qualifications of retailer.**

1. To be selected as a retailer, an individual acting as a sole proprietor must:
  - a. Be at least eighteen years of age;
  - b. Be of good character and reputation;
  - c. Have sufficient financial resources to support the activities required to sell lottery tickets; and
  - d. Be current in payment of all taxes, interest, and penalties owed to the state, excluding items under formal dispute or appeal pursuant to applicable statutes.
2. A retailer may not be a lottery vendor or an employee or agent of any lottery vendor doing business with the North Dakota lottery.

**53-12-14. Individuals ineligible to be licensed as retailer by the lottery.**

An individual may not be licensed by the lottery or involved in lottery activities under this chapter if the individual:

1. Has been convicted of a felony in this or any other jurisdiction, unless at least ten years have passed since satisfactory completion of the sentence or probation imposed by the court in each felony;
2. Has been found to have violated any provision of this chapter or any rule adopted to implement this chapter;
3. Has been found to have a background, including a criminal record, or prior activities that pose a threat to the public interests of the state or to the security and integrity of the lottery; create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of gaming; or present questionable business practices and financial arrangements incidental to the conduct of lottery activities;
4. Is an immediate family member of an employee of the North Dakota lottery or of a member of the advisory commission; or
5. Has knowingly made a false statement of material fact to the North Dakota lottery.

**53-12-15. Partnership as retailer.** For a partnership to be selected as a retailer, the partnership must meet the requirements of subdivisions c and d of subsection 1 of section 53-12-13, and each partner of the partnership must meet the requirements of subdivisions a and b of subsection 1 of section 53-12-13 and of section 53-12-14.

**53-12-16. Organization as retailer.** For an organization other than a partnership to be selected as a retailer, the organization must meet the requirements of subdivisions c and d of subsection 1 of section 53-12-13, and each officer and director and each shareholder who owns five percent or more of an ownership interest in the organization must meet the requirements of subdivisions a and b of subsection 1 of section 53-11-13 and of section 53-12-14.

**53-12-17. Lottery advisory commission created - Appointment of members - Term of office - Qualifications - Chairman - Duties - Compensation - Restrictions - Penalty.**

1. There is created the North Dakota lottery advisory commission, which is composed of five members, three of which are selected by the chairman of the legislative council and two of which are selected by the attorney general. The term of office is three years, expiring on December thirty-first with no more than two terms expiring in any one year. Of the first members appointed, one must be appointed for a term of one year, two must be appointed for terms of two years, and two must be appointed for terms of three years. No member may be appointed to more than two consecutive terms. Each member of the advisory commission must be a citizen of the United States and a resident of this state. A chairman of the commission must be chosen annually from the membership of the commission by a majority of its members at the first meeting of the advisory commission each year.

2. The advisory commission shall meet at least once a quarter and any additional meetings as the chairman deems necessary. Special meetings may be called by the chairman upon the written request of the director or any three members of the commission.
3. The advisory commission shall advise the director and the attorney general in the establishment of policy of the operation of the lottery and shall advise the director regarding the operation of the lottery. For the initial selection of lottery retailers, the commission may recommend, for the director's consideration, lottery retailer applicants for licensure based on criteria prescribed by section 53-12-09.
4. Members of the advisory commission who are not state employees are entitled to be compensated at a rate of seventy-five dollars per day and are entitled to mileage and expenses as provided by law for state officers and employees. A state employee who is a member of the commission must receive that employee's regular salary and is entitled to mileage and expenses, to be paid by the employing agency.
5. No member of the advisory commission, employee of the North Dakota lottery, or any individual residing in the same household as either of those individuals may directly or indirectly, individually, as a member of a partnership or other association, or as a stockholder, director, or officer of a corporation, have an interest in a business which contracts for the operation or promotion of the lottery. A knowing violation of this section is a class B misdemeanor.

**53-12-18. Rules.** The attorney general shall adopt rules governing the establishment and operation of the lottery as necessary to carry out the purposes of this chapter. The attorney general may adopt emergency rules for purposes of this section without the grounds otherwise required under section 28-32-03. The attorney general shall adopt rules concerning the following:

1. The manner of payment of prizes to the holders of winning tickets;
2. The types of locations at which tickets may be sold;
3. The methods to be used in selling tickets;
4. Additional qualifications for the selection of retailers and the amount of application fees to be paid by each;
5. The amount and method of compensation to be paid to retailers, including special bonuses and incentives;
6. Deadlines for claims for prizes by winners of each lottery game, however, in no instance may the deadline be for more than one year;
7. Financial responsibility of persons licensed under this chapter;
8. Licensing procedures; and
9. Any other matters necessary or desirable for the efficient or economical operation of the lottery or for the convenience of the public.

**53-12-19. Lottery operating fund established - Continuing appropriation - Informational budget - Authorization of disbursements - Purposes.** There is established within the state treasury the lottery operating fund into which must be deposited all revenues from the sale of lottery tickets, interest received on moneys in the lottery operating fund, and all other fees and moneys collected. All money in the funds created by this section are continuously appropriated for the purposes specified in this section. Any disbursement from the lottery operating fund must be by authorization of the director for any of the following purposes:

1. The payment of prizes to the holders of valid, winning lottery tickets. A revolving fund, designated as the "lottery prize payment fund", must be set apart and maintained by the director and held by the state treasurer for the payment of prizes;
2. Expenses of the lottery, which include all costs incurred in the operation and administration of the lottery; all costs resulting from contracts entered into for the purchase or lease of goods and services needed for operation of the lottery, including supplies, materials, tickets, independent studies and surveys, data transmission, advertising, printing, promotion, incentives, public relations, communications, and compensation paid to lottery retailers; distribution of tickets; and reimbursement of costs of facilities and services provided by other state agencies; and
3. Transfers of net proceeds as provided by section 53-12-21.

**53-12-20. Amount from sale of tickets allocated for payment of prizes - Means of payment for prizes.** As nearly as practical, a minimum of fifty percent of the projected revenue from the sale of lottery tickets, computed on a year-round basis from the sale of on-line lottery games, must be allocated for payment of prizes. The director shall award the designated prize to the holder of the ticket upon validation of a winning claim ticket. The director may make payment for prizes by any means the director deems appropriate upon the validation of winning tickets.

**53-12-21. Net proceeds transfers.** Five percent of the gross profits generated from the sale of lottery tickets, not to exceed four hundred thousand dollars per biennium, must be transferred to the state treasurer for deposit in the compulsive gambling prevention and treatment fund. The net proceeds, less the amount allocated to the compulsive gambling prevention and treatment fund and a holdback of any reserve funds the director may need for continuing operations, must be transferred to the state treasurer on at least an annual basis for deposit in the state general fund.

**53-12-22. Counterfeiting lottery tickets - Penalty.** Any person who, with intent to defraud, falsely makes, alters, forges, passes, or counterfeits a lottery ticket issued by the North Dakota lottery under this chapter is guilty of a class C felony.

**53-12-23. Sale of tickets at price greater than that fixed by rules prohibited - Sale by authorized retailer only - Penalty.** No person may sell a lottery ticket at a price greater than that fixed by the rules adopted under this chapter. No person other than a retailer licensed by the North Dakota lottery may sell or resell lottery tickets. Any person convicted of violating this section is guilty of a class A misdemeanor on the first offense and a class C felony on the second or subsequent offense.

**53-12-24. Sale of ticket to minor prohibited - Violation.** No lottery ticket may be sold or given to a minor. Any retailer, employee of a retailer, or any other person who knowingly sells or offers to sell or give a lottery ticket to a minor is guilty of a class B misdemeanor on the first offense and a class A misdemeanor on the second or subsequent offense.

**53-12-25. Purchase of ticket or payment of prize to certain persons prohibited - Exceptions - Penalty.**

1. A lottery ticket may not be purchased by, and a prize may not be paid to, any of the following individuals or to any immediate family member of the following persons:
  - a. Any member of the advisory commission or employee of the North Dakota lottery, unless authorized in writing by the director; or
  - b. Any officer or employee of a business that is currently engaged in supplying equipment, supplies, or services being used directly in the operation of any lottery conducted pursuant to this chapter, unless authorized in writing by the director.
2. This section does not prohibit any retailer or the retailer's employee from purchasing lottery tickets or from being paid a prize of a winning ticket.
3. Any person who knowingly violates this section is guilty of a class B misdemeanor on the first offense and a class A misdemeanor on the second or subsequent offense.

**53-12-26. Prize paid to holder of winning ticket - Deceased winner's prize paid to representative - Prizes subject to taxation - Liability of lottery after payment of prize.** The prize to be paid or awarded for each winning ticket must be paid to the person that is adjudged by the director to be the holder of the winning ticket. However, the prize of a deceased winner must be paid to the lawful representative of the estate of the winner. All prizes awarded are subject to state and federal income tax laws and regulations. The state, members of the advisory commission, and employees of the North Dakota lottery are discharged of all further liability upon payment of a prize under this section.

**53-12-27. Lottery products on Indian reservations.** The North Dakota lottery may license a retailer within the exterior boundaries of Indian reservations or on tribal trust land referenced by the tribal-state gaming compacts in effect within the state.

**53-12-28. Confidentiality of lottery records.**

1. The following information and records of the North Dakota lottery are confidential:
  - a. Sales and income tax information, financial statements, and credit reports of retailer applicants and persons seeking or doing business with the lottery, and application information other than an applicant's name and retail location;
  - b. Information related to persons owing a debt to the state or having a debt collected through a state agency made confidential by another state law or rule remains confidential under this section;

- c. Internal control and security procedures and information on bids or contractual data, the disclosure of which is harmful to the efforts of the lottery to contract for goods and services on favorable terms;
  - d. Personal information on a winning player unless the player authorizes, in writing, release of the information; and
  - e. Sales data, the disclosure of which is harmful to the competitive position of the lottery, retailers, or persons seeking or doing business with the lottery.
2. To be confidential, the information must be necessary to the security and integrity of the lottery. The information and records may be disclosed within the attorney general's office or to authorized persons in the proper administration of this chapter or lottery rule or in accordance with a judicial order. Criminal history record check information on a retailer applicant or person seeking or doing business with the lottery may be disseminated only according to chapter 12-60.

**53-12-29. Lottery setoff program established - Computerized file of persons owing state.** The director shall establish a liability setoff program by which lottery prize payments may be used to satisfy debts owed or collected through state agencies. Any participating state agency, on a monthly basis, shall provide the director a computerized file of persons owing a debt to or collected through that state agency which contains the following information: the first name, last name, middle initial, social security number, and the amount and type of the debt.

**53-12-30. Debt setoff from prize due - Time limitation - Transfer of setoff amount to agency.** The director shall match the information submitted by the agency with persons who are entitled to a lottery prize payment in an amount equal to or greater than six hundred dollars. If there is a match, the director shall set off the amount of the debt from the prize due and notify the person of the setoff. If the setoff accounts for only a portion of the prize due, the remainder of the prize shall be paid to the person. The director shall transfer the setoff amount to the agency unless the person notifies the director, in writing, no later than thirty days after receiving the notice of the setoff that the person disputes all or a part of the debt owed or to be collected by the state agency.

**53-12-31. Advisory commission, employees, and lottery discharged from liability.** The members of the advisory commission, director, employees, and the North Dakota lottery are discharged of all further liability for the amount of any setoff paid to a state agency.

**53-12-32. Apportionment of prize among agencies - Priority of child support payments.** If two or more agencies have delinquent accounts for the same person, the director shall apportion the prize equally among them. However, a setoff to the department of human services for child support payments has priority over all other setoffs.

**53-12-33. Collection of remainder of debt.** If the prize is insufficient to satisfy the entire debt, the remainder of the debt may be collected by the agency as provided by law and resubmitted for setoff against any other prize awarded.

**53-12-34. Voluntary deposit of adverse claims to prize payment or award.** Notwithstanding sections 53-12-20, 53-12-24, 53-12-26, 53-12-30, and 53-12-32, if two or more persons or state agencies make adverse claims to all or a



part of a prize payment or award, upon receipt of written notice from the claimants setting forth their respective claims, the director may deposit, in accordance with section 32-11-02, the contested amount of the prize payment or award with the clerk of court in the district in which an action pertaining to the contested amount is pending or with a court-authorized depository. Upon making the deposit, the state and its officials and employees are discharged and relieved from further liability to any person or agency on account of the prize payment or award.

<sup>204</sup> **SECTION 4. AMENDMENT.** Subsection 2 of section 54-10-01 of the North Dakota Century Code is amended and reenacted as follows:

2. Perform or provide for the audit of the general purpose financial statements and a review of the material included in the comprehensive annual financial report of the state and perform or provide for the audits and reviews of state agencies. The Except for the annual audit of the North Dakota lottery required by section 53-12-07, the state auditor shall audit or review each state agency once every two years. The state auditor shall determine the contents of the audits and reviews of state agencies. The state auditor may conduct any work required by the federal government. The state auditor shall charge an amount equal to the cost of the audit and other services rendered by the state auditor to all agencies that receive and expend moneys from other than the general fund. This charge may be reduced for any agency that receives and expends both general fund and non-general fund moneys. Audits and reviews may be conducted at more frequent intervals if requested by the governor or legislative audit and fiscal review committee.

<sup>205</sup> **SECTION 5.** A new subsection to section 57-38-57 of the North Dakota Century Code is created and enacted as follows:

The tax commissioner, upon written request from the director of the North Dakota lottery, may provide a written statement to the director, employees, or agents of the North Dakota lottery, in which the tax commissioner is limited to stating that the lottery retailer applicant has complied or not complied with the requirements of this chapter. The information obtained under this subsection is confidential and may be used for the sole purpose of determining whether the applicant meets the requirements of subdivision d of subsection 1 of section 53-12-13 and subdivision d of subsection 1 of section 53-12-14.

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<sup>204</sup> Section 54-10-01 was also amended by section 3 of Senate Bill No. 2004, chapter 25.

<sup>205</sup> Section 57-38-57 was also amended by section 2 of House Bill No. 1115, chapter 441.

<sup>206</sup> **SECTION 6.** A new subsection to section 57-39.2-04 of the North Dakota Century Code is created and enacted as follows:

Gross receipts from the sale of lottery tickets under chapter 53-12.

**SECTION 7.** A new subsection to section 57-39.2-23 of the North Dakota Century Code is created and enacted as follows:

The tax commissioner, upon written request from the director of the North Dakota lottery, may provide a written statement to the director, employees, or agents of the North Dakota lottery, in which the tax commissioner is limited to stating that the lottery retailer applicant has complied or not complied with the requirements of this chapter. the information obtained under this subsection is confidential and may be used for the sole purpose of determining whether the applicant meets the requirements of subdivision d of subsection 1 of section 53-12-13 and subdivision d of subsection 1 of section 53-12-14.

**SECTION 8. ATTORNEY GENERAL REIMBURSEMENT - STARTUP EXPENSES.** During the biennium beginning July 1, 2003, and ending June 30, 2005, the attorney general's operating fund must be reimbursed from lottery gross profits, in an amount not to exceed \$85,000, for expenses associated with the startup of the lottery which were incurred before July 1, 2003.

**SECTION 9. EMERGENCY.** This Act is declared to be an emergency measure.

Approved April 4, 2003  
Filed April 4, 2003

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<sup>206</sup> Section 57-39.2-04 was also amended by section 1 of House Bill No. 1328, chapter 536, section 21 of House Bill No. 1426, chapter 96, section 6 of Senate Bill No. 2096, chapter 539, section 7 of Senate Bill No. 2096, chapter 539, section 8 of Senate Bill No. 2096, chapter 539, section 9 of Senate Bill No. 2096, chapter 539, section 10 of Senate Bill No. 2096, chapter 539, and section 5 of Senate Bill No. 2159, chapter 524.